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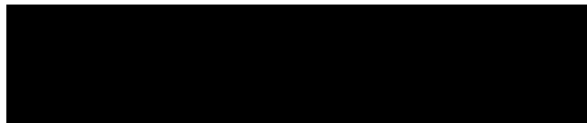
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

**U.S. Citizenship  
and Immigration  
Services**

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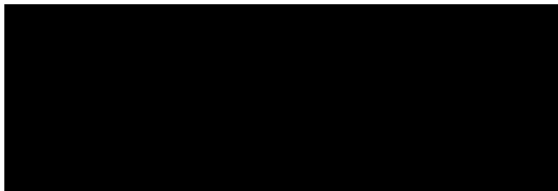
DATE: **APR 28 2011** Office: CALIFORNIA SERVICE CENTER FILE: WAC 09 122 51373

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation established on February 24, 2009, intends to operate a trading and import-export business. The petitioner claims that it is an affiliate of [REDACTED]. The petitioner seeks to employ the beneficiary in the position of president of its new office in the United States for a period of three years.<sup>1</sup>

The director denied the petition, concluding that the petitioner failed to establish that it had secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director denied the petition based on a misinterpretation and incorrect application of the law and without a complete review of the evidence submitted. Counsel contends that the petitioner did in fact acquire an office and intended to expand operations upon approval of the petition, and upon the beneficiary's arrival in the United States.

## **I. The Law**

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

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<sup>1</sup> Pursuant to 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

## **II. Discussion**

The sole issue addressed by the director is whether the petitioner established that it has secured sufficient physical premises to house the new office.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 23, 2009. The petitioner indicated its mailing address as [REDACTED] stated that the beneficiary would also be working at this location.

At the time of filing, the petitioner submitted a "Standard Service Agreement" between the petitioner's foreign affiliate and Broadway Southern California Executive Suites LLC, operating as "Synergy Workplaces." According to the terms of the agreement, the foreign entity licensed the use of office number 263 for a period of three months commencing on March 1, 2009. The company is required to pay a monthly fee of \$300.00

for the use of the office, and did not request any additional services such as telephone sets, a fax line, Internet access, parking, or call forwarding. The agreement provides for the use of one office with one occupant. According to the terms stated, the agreement lasts for the period stated and will automatically renew for successive periods for the same duration as the initial term.

In a statement submitted in support of the petition, the petitioner indicated that it intends to operate a trading/import-export business. Specifically, the petitioner indicated that it will export computers, peripherals and electronics to Pakistan, and import women's shoes, garments and other commodities from Pakistan. The petitioner did not submit a business plan or other information detailing its anticipated space and facility requirements.

The director issued a request for evidence ("RFE") on March 26, 2009 in which she instructed the petitioner to submit, *inter alia*, the following with respect to the company's business premises: (1) a copy of the U.S. company's floor plan for all spaces including office, warehouse and production spaces, which identifies the work space location for each position in the petitioner's organizational chart; (2) color photographs of the U.S. business premises which show the interior and exterior of all work spaces; (3) a complete copy of the petitioner's lease indicating the total square footage of the premises; (4) a letter from the owner or property management company which confirms that the U.S. company is occupying and maintaining its lease agreement; (5) the current operating business phone number located within the petitioner's physical premises; and (6) a copy of the U.S. company's business insurance policy or the business insurance policy from the building owner or management company.

In a letter dated April 25, 2009, the petitioner indicated that it intends to start the company with five employees in addition to the president. The petitioner stated that the lease provided at the time of filing is for its "initial office" and that it will later expend into another location after the business grows. According to the petitioner's business plan, the company intends to outsource warehouse services for its import and export business.

In support of the RFE response, the petitioner submitted copies of e-mail correspondence between the beneficiary and representatives of Synergy Workplaces which predated the signing of the above referenced "Standard Service Agreement." The petitioner submitted color photographs of the exterior of the office building, a reception area, a kitchen area, and an office. The petitioner also submitted a floor plan for the premises at 5150 E. Pacific Coast Hwy, 2<sup>nd</sup> Floor, Long Beach, California. The offices on the floor plan are labeled from number 2 through number 65.

The director denied the petition on May 20, 2009, concluding that the petitioner failed to establish that it had secured sufficient physical premises to house the new office. In denying the petition, the director emphasized that the office space secured is only sufficient for one occupant and therefore would not support the petitioner's intended six-person workforce or business operations. In addition, the director emphasized that the petitioner failed to submit requested evidence such as a letter from the owner or property management company, proof of insurance, telephone number, or a floor plan providing the square footage of the occupied space. The director observed that the floor plan submitted did not appear to include an office or suite #263. Finally, the director noted that the fact that the petitioner signed a short-term lease raised a question as to whether the petitioner intends to secure physical premises for the one year required by regulations.

On appeal, counsel asserts that "the definition of sufficient space is vague" and that the director "took a very narrow definition of the statue [sic] discarding the situation of the Petitioner, where its President was in Pakistan, unable to see the office space personally, and had to deal primarily via email." Counsel further states:

Director also requires the start-up business to implement a flawed strategy of spending too much money unnecessarily by acquiring an office space when it is not necessary. Shrewd businessmen spend what is required not under take unnecessary spending. It was the intention of the Petitioner to expand operations once the L-1 was granted to Beneficiary and he arrived in the US and started hiring its employees. It seems to the Petitioner that the Director focused its complete attention on the issue of office space and ignored the extensive documentation presented with the Petition.

Upon review, the AAO concurs with the director's conclusion that the petitioner failed to establish that it has secured sufficient physical premises to house the new office.

The AAO notes that some of the evidence requested by the director, such as photographs of employees working in the office, photographs of company logos and signs displayed on the building, proof of occupancy, and utility bills, could not reasonably be provided prior to the beneficiary's arrival in the United States. However, the director specifically requested that the petitioner submit an original letter from the lessor, as well as a layout showing the square footage of the petitioner's leased space. The petitioner failed to provide any of this evidence in response to the RFE, and did not explain why such evidence would be unavailable. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As noted above, the floor plan submitted does not clearly identify the petitioner's "Office #263." Further, the fact that the petitioner did not request telephones, a fax machine, or Internet access for its office raises questions as to whether the petitioner intends to occupy the office to operate the intended business.

Moreover, the petitioner has failed to submit a business plan or any other documentary evidence establishing the company's anticipated space requirements for its import and export business. While the petitioner indicates that it intends to outsource the warehousing function, it also indicates that it intends to commence business operations with a staff of six people and it has leased an office that appears to be suitable for a single occupant. Counsel's assertion that the beneficiary intends to expand operations upon arrival in the United States is insufficient. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has not identified any proposed plans for a larger office or indicated where its warehouse operations will be located. The petitioner's business plan is nearly devoid of any financial projections that may, for example, indicate that the petitioner has budgeted for increased office and warehouse costs during the first year of operations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While counsel argues that the director erred by focusing on the petitioner's limited office space, counsel overlooks the fact that the regulations clearly require the petitioner to submit evidence that it has secured sufficient physical premises to house the new office as a separate criterion for establishing eligibility pursuant to 8 C.F.R. § 214.2(l)(3)(v)(A). Counsel correctly alludes to the fact that there is no regulatory definition of "sufficient physical premises"; however, it is reasonable to interpret the term to mean that the space secured is sufficient for the operation of the intended type of business, rather than to accept the proposition that any lease agreement will satisfy the petitioner's burden. The petitioner's failure to satisfy this requirement alone provides sufficient basis for the denial of the L-1 petition.

As the petitioner has opted not to supplement the record on appeal, the AAO concurs with the director's conclusion that the petitioner failed to establish that the petitioner has secured sufficient physical premises to house the new office. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, a remaining issue in this matter is whether the petitioner established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined at 8 C.F.R. § 214.2(l)(1)(ii)(B) or (C). The petitioner is required to submit supporting evidence regarding the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals, and to provide evidence of the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States. 8 C.F.R. § 214.2(l)(3)(v)(C).

If a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

The AAO's analysis of this issue is severely restricted by the petitioner's failure to submit an adequate business plan for the start-up of the U.S. company. The director instructed the petitioner to provide copies of business plans prepared for the U.S. entity that include specific details as to the business to be conducted and one, three and five-year projections for business expenses, sales, gross income and profits or losses. While the petitioner submitted a general business plan in response to the RFE, the plan provides minimal information regarding the number and types of employees to be hired, the timeline for hiring employees, the financial position of the U.S. company, or the petitioner's anticipated start-up costs, operating costs, and financial objectives for the first years of operations. The petitioner indicates that it will initially operate with five subordinate staff including an office manager, two market/sales representatives, a receptionist and an accounts clerk. It has not indicated when these employees will be hired or described their proposed duties, and thus has not established how this staff would be sufficient to relieve the beneficiary from performing primarily non-managerial duties by the end of the first year of operations. Without a business plan or comparable evidence of the anticipated nature and scope of the entity, its organizational structure, and its financial goals, the petitioner has not clearly documented its anticipated staffing levels for the first year of

operations or how it will grow to support a managerial or executive position within one year. The petitioner has not submitted sufficient evidence to meet the regulatory requirement at 8 C.F.R. § 214.2(l)(3)(v)(C)(1).

With respect to the petitioner's requirement to provide evidence of the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States, the petitioner has stated that "the company intends to invest approximately \$40,000 initially to start its business operations." Again, the petitioner's business plan does not outline the company's projected start-up costs or contain any other evidence of any financial transactions corroborating the petitioner's claims regarding the investment. Without such evidence, the petitioner has not met its burden to establish the size of the United States investment pursuant to 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

The regulations require the petitioner to present a credible picture of where the company will stand in exactly one year, and to provide sufficient supporting evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position within one year. The evidence submitted fails to demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)). For these additional reasons, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis). When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.